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**BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.**

ATTORNEYS AT LAW  
5835 WISCONSIN AVENUE, N.W., SUITE 300  
WASHINGTON, D.C. 20015-2003

(202) 686-3200

RECEIVED

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OF COUNSEL  
ROBERT BENNETT LUBIC  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
(202) 686-8282

B. JAY BARAFF  
ROBERT L. OLENDER  
JAMES A. KOERNER  
PHILIP R. HOCHBERG  
AARON P. SHAINIS  
LEE J. PELTZMAN  
MARK J. PALCHICK  
JAMES E. MEYERS

February 16, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, D.C. 20554

RE: Implementation of Sections 12 and 19  
of the Cable Television Consumer  
Protection and Competition Act of 1992

Development of Competition and  
Diversity of Video Programming  
Distribution and Carriage

MM Docket No. 92-265

Dear Ms. Searcy:

Transmitted herewith, on behalf of the Sammons Communications, Inc., is an original and ten copies of its Reply Comments in the above referenced matter.

Please note that five of the enclosed copies are for distribution to the Commissioners. Should you have any questions regarding this filing, please contact the undersigned.

Sincerely,



Mark J. Palchick

MJP/mcl  
Enclosure

cc: William H. Johnson, MMB, FCC  
Ronald Parver, MMB, FCC  
James R. Coltharp, MMB, FCC  
Diane L. Hofbauer, OGC, FCC

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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Sections 12 and 19 )  
of the Cable Television Consumer )  
Protection and Competition Act of 1992 )

Development of Competition and )  
Diversity in Video Programming )  
Distribution and Carriage )

MM Docket No. 92-265

Reply Comments of Sammons Communications, Inc.

SAMMONS COMMUNICATIONS, INC.  
Mark Weber, President  
3010 LJB Freeway, Suite 800  
Dallas, TX 75234  
214/484-8888

February 16, 1993

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

FEB 10 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections 12 and 19  
of the Cable Television Consumer  
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Development of Competition and  
Diversity in Video Programming  
Distribution and Carriage

MM Docket No. 92-265

**REPLY COMMENTS OF SAMMONS COMMUNICATIONS, INC.**

Sammons Communications, Inc. ("Sammons") respectfully submits its Reply to the Comments filed in the above-captioned notice of proposed rulemaking. Sammons by these Reply Comments supports the Comments filed by the Community Antenna Television Association.

Sammons is a multiple cable television system operator that provides cable television service throughout the United States. Sammons has in the past and continues to be disadvantaged by various price, terms and conditions contained in the program carriage agreements of video programming vendors. As a result, the choices available to Sammons' subscribers have been restricted; the costs of providing video programming has increased; and Sammons ability to launch new and innovated services has been curtailed.

A central purpose of the Cable Television Consumer Protection Act of 1992 (Pub. L. No. 102-385, 106 Stat. 1992) ("1992 Cable Act") was as a reaction to the increase in monthly rates for cable

service.<sup>1</sup> The Commission's Enforcement of New Section 616 and 628 of the 1992 Cable Act will have a direct and immediate impact on the cost of cable service to subscribers. Sammons has found that as a percentage of revenue its cost for carriage of non-premium cable satellite programming is its second highest cost. In fact, the cost for non-premium cable satellite programming is a greater percentage of revenues than all other expenses, except for labor, combined. Furthermore, Sammons' cost for non-premium cable satellite programming has risen 334 % per subscriber since 1986. If the Commission is concerned about the cost of cable service to subscribers, it must examine the cost of programming to the cable operator. The Commission should consider how the terms of program carriage agreements that are imposed by the market dominant services have increased costs. The cost to subscribers has increased because these contracts restrict the ability of cable operators to market programming services consistent with consumer demand and have forced non-marketplace subsidization of some services.

Section 616 of the 1992 Cable Act provides in pertinent part:

"Within one year after the date of enactment of this Section, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multi-channel video programming distributors and video programming vendors."

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<sup>1</sup>1992 Cable Act at Section 2.

Moreover, the Senate Report on the 1992 Cable Act found at page 77 that "greater unbundling of offerings leads to more subscriber choice and greater competition among program services" and that "one of the prime goals of the legislation is to enhance subscriber choice." Accordingly, consistent with the mandate in Section 616, Sammons requests that the Commission adopt rules and regulations which would prohibit any video programming vendor from restricting a cable operator's ability to decide how to sell or market a service. Specifically, such regulation would permit the cable operator to decide whether to market a service on either an a-la-carte basis or on a tier.

A non-affiliated cable operator has little or no bargaining power with the market dominant programming services. As pointed out by CATA in its Comments, a non-affiliated cable operator cannot realistically refuse to carry the various market-dominant programming services. As a result, the cable operator has little or no bargaining power concerning the terms and conditions under which it carries such programming. In many instances, the cable operator has no choice but to carry the program service consistent with the restrictive terms and conditions of the programming agreement because these provisions are not subject to negotiation. The most onerous of these provisions is the requirement by programming services such as the MTV Networks, the Turner Network Services, and ESPN, which dictate where these services must be carried on the cable system and prohibit a cable operator from

either tiering those services with like kind services or marketing them on an a-la-carte basis. This inability to market based on consumer demands has a direct cost to subscribers. For example, the costs for marque sports services has radically increased over the last several years. In many instances, substantial portions of a cable operator's subscriber base has little or no interest in receiving these sports programming services. However, as a precondition for carriage of these services, cable operators are often forced to bundle those services with other more widely desired services. Thus, the cost to all subscribers has increased instead of the cost increases being limited to those subscribers who particularly care for sports programming.

The tiering restrictions imposed by program services have also substantially reduced the ability of Sammons to launch new services or more narrow oriented services on its cable systems. Sammons would like to bundle new services or narrow interest services with similar types of services and thus give the service the necessary exposure to grow. However, many of the programming service agreements specifically restrict the degree to which the market dominant services can be offered in connection with other services. If the cable operator was permitted to market based on the needs and interests of its subscriber, and not limited by the coercive of terms of many of these program carriage agreements, subscribers would doubly benefit by reduced over-all cost and by greater diversity.

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Accordingly, the Commission needs to look not only at the coercive practices of some large integrated cable operators, but also the coercive practices of the large market dominant video programming vendors. By prohibiting restrictive programming agreements that do not allow cable operators to market consistent with the demands of their individual subscriber basis, the Commission will be both furthering program diversity and reducing costs to subscribers.

In conclusion, Sammons Communications, Inc., respectfully requests the Commission to adopt rules and regulations which will leave the determination of whether or not to market a service on an a-la-carte or tiered basis to the cable operator based on the needs of its subscribers and to allow non-affiliated cable operators to obtain relief from the Commission pursuant to Sections 616 and 628 of the 1992 Cable Act when program carriage agreements prohibit the free operation of the marketplace.

Respectfully submitted,

SAMMONS COMMUNICATIONS, INC.

By: 

Mark Weber, President  
3010 LBJ Freeway, Suite 800  
Dallas, TX 75234  
214/484-8888

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**CERTIFICATE OF SERVICE**

I, Marianne C. Lynch, certify that I have this 16th day of February, 1993, sent by regular United States mail, postage prepaid, a copy of the foregoing "Reply Comments" to:

Brenda L. Fox  
David J. Wittenstein  
Michael J. Pierce  
Dow, Lohnes & Albertson  
1255-23rd Street, NW  
Suite 500  
Washington, D.C. 20037

Garret G. Rasmussen  
Patton, Boggs & Blow  
2550 K Street, NW  
Washington, D.C. 20037

Louise A. Isakoff, Esq.  
General Counsel  
International Family  
Entertainment, Inc.  
1000 Centerville Turnpike  
Virginia Beach, VA 23463

National Cable Television  
Association, Inc.  
Daniel L. Brenner, Esq.  
Michael S. Schooler, Esq.  
1724 Massachusetts Avenue, NW  
Washington, D.C. 20036

Donna Coleman Gregg, Esq.  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, D.C. 20006

Christopher B. Fager  
E! Entertainment Television, Inc.  
5670 Wilshire Blvd.  
Los Angeles, CA 90036

W. James MacNaugeton, Esq.  
National Satellite Programming  
Network, Inc.  
90 Woodbridge Center Drive  
Suite 610  
Woodbridge, NJ 07095

Jane Cottrell, Esq.  
Group W Satellite Communications  
250 Harbor Drive  
Stamford, CT 06904



Martin T. McCue, Esq.  
U.S. Telephone Association  
900-19th Street, NW, Suite 800  
Washington, D.C. 20006-2105

Robert J. Sachs  
Continental Cablevision  
Pilot House, Lewis Wharf  
Boston, MA 02110

Frank W. Lloyd, Esq.  
Mintz, Levin, et al.  
701 Penn. Avenue, NW, Ste. 900  
Washington, D.C. 20004

Robert L. Hoegle  
Carter, Ledyard & Milburn  
1350 I Street, NW, Ste. 870  
Washington, D.C. 20005

Gary M. Epstein, Esq.  
Latham & Watkins  
Suite 1300  
1001 Penn. Avenue, NW  
Washington, D.C. 20004

William B. Barfield  
BellSouth Telecommunications, Inc.  
Suite 1800  
1155 Peachtree Street, NE  
Atlanta, GA 30367-6000

Richard E. Wiley, Esq.  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, D.C. 20006

Kenneth Logan, Esq.  
Simpson, Thacher & Bartlett  
425 Lexington Avenue  
New York, NY 10017

Henry M. Rivera, Esq.  
Ginsburg, Feldman and Bress, Chtr.  
1250 Conn. Ave., NW, Ste. 800  
Washington, D.C. 20036

Cravath, Swaine & Moore  
Time Warner Entertainment Co.  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019

Bertram W. Carp  
Turner Broadcasting System, Inc.  
820 First Street, NE  
Washington, D.C. 20004

Bruce D. Sokler  
Mintz, Levin, et al.  
701 Penn. Avenue, NW  
Suite 900  
Washington, D.C. 20004

Mark C. Ellison, Esq.  
Hardy & Ellison, PC  
9306 Old Keene Mill Road  
Ste. 100  
Burke, VA 22015

David Cosson  
National Telephone Cooperative  
Assoc.  
2626 Penn. Avenue, NW  
Washington, D.C. 20037

Robert J. Rini, Esq.  
The Coalitiation of Concerned  
Wireless Cable Operators  
Rini & Coran, PC  
1350 Conn. Ave., NW, Ste. 900  
Washington, D.C. 20036

James T. Hannon  
US West Communications, Inc.  
1020 19th Street, NW, Ste. 700  
Washington, D.C. 20036

G. Todd Hardy, Esq.  
Hardy & Ellison  
9306 Old Keene Mill Road  
Suite 100  
Burke, VA 22015

David Overlock Stewart, Esq.  
Ropes & Gray  
1001 Penn. Avenue, NW  
Washington, D.C. 20004

Josephine S. Trubek, Esq.  
Rochester Telephone Corporation  
180 South Clinton Avenue  
Rochester, NY 14646-0700

Thomas P. Perkins, Jr., Esq.  
Texas Attorney General's Office  
PO Box 12548  
Austin, TX 78711-2548

Margaret L. Tobey  
Akin, Gump, Strauss, et al.  
1333 New Hampshire Avenue, NW  
Washington, D.C. 20036

Fritz E. Attaway  
Motion Picture Assoc. of America, Inc.  
1600 Eye Street, NW  
Washington, D.C. 20006

Howard J. Symons  
Mintz, Levin, et al.  
701 Penn. Avenue, NW, Ste. 900  
Washington, D.C. 20004

United Video, Inc.  
3801 S. Sheridan Road  
Tulsa, OK 74145

Gardner F. Gillespie, Esq.  
Hogan & Hartson  
555 Thirteenth Street, NW  
Washington, D.C. 20004-1109

John B. Richards, Esq.  
Keller and Heckman  
1001 G Street, NW,  
Suite 500 West  
Washington, D.C. 20001

Paul J. Sinderbrand, Esq.  
Sinderbrad & Alexander  
888 Sixteenth Street, NW  
Ste. 610  
Washington, D.C. 20006-4103

Nicholas W. Allard  
1001 Penn. Avenue, NW  
Suite 1300  
Washington, D.C. 20004

Mr. Ted Coombes  
American Public Power Association  
2301 M Street, NW  
Washington, D.C. 20037-1484

Alan I. Bobbins  
Baller Hammett, PC  
1225 Eye Street, NW  
Washington, D.C. 20005

David B. Gluck, Esq.  
600 Las Colinas Blvd.  
Suite 2200  
Irving, TX 75039

Floyd S. Keene, Esq.  
Ameritech Operating Companies  
Room 4H74  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

Mark L. Evans, Esq.  
Miller & Chevalier  
655 Fifteenth Street, NW  
Washington, D.C. 20005

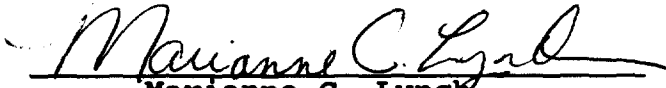
Mary McDermott, Esq.  
NYNEX Telephone Companies  
120 Bloomingdale Road  
White Plains, NY 10605

Paul J. Sinderbrand, Esq.  
Sinderbrand & Alexander  
888-16th Street, NW  
Washington, D.C. 20006-4103

Deborah C. Costlow, Esq.  
Winston & Strawn  
1400 L Street, NW, Ste. 700  
Washington, D.C. 20005

Richard S. Rodin, Esq.  
Hogan & Hartson  
555-13th Street, NW  
Washington, D.C. 20004

Robert L. James, Esq.  
Cole, Raywid & Braverman  
1919 Penn. Avenue, NW  
Suite 200  
Washington, D.C. 20006

  
Marianne C. Lynch

c:\wp\sammons\replycom.cos